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December 3, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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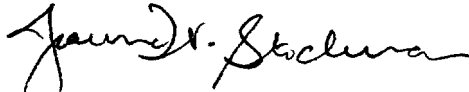
Re: COMMENTS OF WINSTAR COMMUNICATIONS, INC.
Local Competition and Broadband Reporting, CC Docket No. 99-301

Dear Ms. Salas:

On behalf of Winstar Communications, Inc. ("Winstar"), enclosed please find an original and four (4) copies of its comments in the above-referenced proceeding. Kindly date stamp and return the enclosed extra copy of this filing.

Should you have any questions regarding this matter, please do not hesitate to contact us.

Very truly yours,



Patrick J. Donovan
Jeanne W. Stockman

Counsel for Winstar Communications, Inc.

Enclosures

cc: Lawrence A. Walke
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Before the
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Washington, D.C. 20554

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In the Matter of)
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Local Competition and Broadband Reporting)
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CC Docket No. 99-301

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. and its operating subsidiaries (collectively "Winstar"),¹ by its undersigned counsel, hereby files Comments regarding the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.² Winstar questions the need for the Commission to impose mandatory data collection obligations on CLECs and broadband service providers. The Commission already adequately tracks the status of local telephone competition and the deployment of advanced telecommunications capability through the voluntary collection of data. In addition, regardless of whether reporting remains voluntary or becomes mandatory, Winstar urges the Commission to make information publicly available on an aggregated basis only in order to preserve carrier confidentiality.

¹ Winstar is a publicly-held company (traded on the NASDAQ) which, among other things, develops, markets, and delivers local telecommunications and broadband services in the United States. Through its operating affiliates, Winstar provides facilities-based local telecommunications services on a point-to-point basis principally using wireless, digital millimeter wave capacity in the 38 gigahertz (GHz) band.

² *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Notice of Proposed Rulemaking, rel. Oct. 22, 1999 ("NPRM").

I. THE COMMISSION NEED NOT IMPOSE BURDENSOME FILING OBLIGATIONS ON CLECS AND BROADBAND SERVICE PROVIDERS IN ORDER TO COLLECT INFORMATION ON THE STATE OF COMPETITION.

The NPRM tentatively concludes that "only a mandatory and systematic collection of local competition and broadband deployment information will provide the comprehensive set of reliable data [the Commission] require[s] to carry out [its] statutory duties."³ While Winstar understands how a mandatory reporting requirement may be attractive from the Commission's perspective, this would be unduly burdensome to carriers and is unlikely to yield significantly more meaningful data than what can be collected on a voluntary basis. The NPRM criticizes voluntary data collection mechanisms generally, but it fails to identify specific shortcomings of the voluntary survey currently in place.⁴ The Commission already generates a Local Competition Report that comprehensively reports on the state of local service competition based on revenues. The NPRM fails to explain why it now needs to impose mandatory data collection in order to produce this report or how future reports would be improved by mandatory collection.

In addition, compilations already are available from various private sources that report on the status of local competition based on the number of lines.⁵ It would be a far less burdensome and more economical use of Commission and carrier resources for the Commission to simply rely on these reports rather than to embark on an extensive, onerous and costly new regulatory program of mandatory data collection. In general, the NPRM does not present any serious analysis of why private sector reports or publicly available data would not be adequate for purposes of assessing the state of local competition.

The Commission notes that participation in past voluntary surveys has been "spotty,"⁶ but offers no explanation of which carriers or class of carriers have been under-represented or how

³NPRM, ¶ 20.

⁴See, e.g., NPRM, ¶ 18 ("it has been our experience that voluntary surveys are not a fully satisfactory source of provider data").

⁵See, e.g., Doug Brown, *The Year of Living Dangerously: When Is a CLEC Not a CLEC?*, TELECOMMUNICATIONS, November 1999 (citing CLEC access line reports and estimates of Deutsche Banc Alex Brown).

⁶NPRM, ¶ 18.

their participation would be improved through moving to mandatory reporting. Certain incumbent local exchange carriers ("ILECs") have apparently informally threatened to stop participating on a voluntary basis in the long run unless a "more comprehensive set of providers" is required to participate.⁷ While Winstar observes that this position jeopardizes the future success of voluntary data collections, it is dismayed at the manner in which these strong-arm tactics are being used to impose unnecessary burdens on other industry segments. Further, with the Commission's proposed threshold of 50,000 access lines, numerous new market entrants will be exempt from mandatory reporting thereby perpetuating disparities in reporting obligations even under the NPRM.

The Commission speculates that the voluntary nature of participation may have encouraged participants to treat data collection as a provisional and unsystematic effort that did not require the reporting of accurate and consistent data.⁸ The NPRM, however, is bereft of any analysis which either suggests that the information provided voluntarily was inaccurate or inconsistent, or supports the conclusion that making the survey mandatory would improve the quality of information submitted. To the contrary, the NPRM emphasizes that voluntary surveys have "yielded much useful information about evolving patterns of local competition."⁹ Accordingly, Winstar believes it is unwarranted to impose mandatory reporting requirements at the present time, particularly in light of the burden that would be placed on carriers by doing so.

The purported need for mandatory reporting fails to outweigh the significant burden that would result to carriers. The NPRM proposes to have carriers report either quarterly, semi-annually, or annually.¹⁰ There could be no justification to impose quarterly, or perhaps even semi-annual, reporting obligations if the Commission's reports are produced only annually.¹¹ Given the scope of information requested, this poses a significant burden to newer market

⁷NPRM, ¶ 18 & n.27.

⁸NPRM, ¶ 18.

⁹*Id.*

¹⁰NPRM, ¶ 35.

¹¹NPRM, ¶ 2 (stating Commission's intent to issue reports each calendar year).

entrants particularly when the need for mandatory filing has not been clearly established and when much of the requested information is obtainable through other existing means. As noted in the NPRM,¹² much of the requested data is available from other sources, such as publicly available documents and other regulatory filings, including FCC filings.¹³

Further, Winstar, and presumably most other CLECs, do not maintain its records in a manner which permits the transfer of data to the format proposed in the NPRM. Consequently, complying with the proposed mandatory reporting requirements would require Winstar to completely overhaul numerous internal recordkeeping functions, imposing substantial burdens and costs on Winstar and other CLECs. Moreover, although the Commission implies that mandatory federal reporting may result in the elimination of duplicative state filings, thereby reducing the overall reporting burden to carriers,¹⁴ this purported benefit may never be realized. The NPRM does not indicate that any state has agreed to curtail or eliminate its reporting requirements upon its adoption. Because of the sheer number and varied interests of the states, state-specific reporting obligations will continue to exist. Thus, carriers would face greatly increased reporting requirements as a result of the Commission's proposal, with no assurance of any offset at the state level. Of course, the existence of state reporting requirements suggests that the Commission could rely on these reports rather than imposing new, duplicative federal reporting requirements.

The NPRM states that the Commission is mindful of the need to limit the burdens imposed by information collection.¹⁵ Winstar encourages the Commission to balance the alleged benefits of mandatory information reporting against the burden mandatory reporting would

¹²NPRM, ¶ 17.

¹³Although revenue data is not to be reported in the proposed filing, Winstar respectfully reminds the FCC that revenue data from Universal Service worksheets and contributions remains a particularly useful tool for gauging the level of competition in the local exchange telecommunications market. In addition, the NPRM states that the FCC plans to continue release of a Notice of Inquiry to solicit comment on the state of broadband capability and deployment, thus providing another forum for the submission of relevant data. NPRM, ¶ 2.

¹⁴NPRM, ¶ 16.

¹⁵NPRM, ¶ 4.

create for subject carriers. Winstar submits that the burdens of mandatory reporting outweigh the benefits that would result, and urges the Commission to continue to collect data on a voluntary basis.

II. ALL DATA COLLECTED BY THE COMMISSION, WHETHER SUBMITTED ON A VOLUNTARY OR MANDATORY BASIS, SHOULD BE KEPT CONFIDENTIAL AND ONLY PUBLICLY RELEASED IN AN AGGREGATED FORM.

In the NPRM, the Commission tentatively concludes that all information submitted pursuant to the proposed reporting requirements, whether submitted on a voluntary or mandatory basis, should be made publicly available. Winstar understands that the Commission is to submit a report to Congress on broadband competition; however, this obligation in no way compels the Commission to publicly release individual carriers' data. Moreover, the NPRM contains no justification for disclosure on a carrier-by-carrier basis. Although the Commission recognizes some entities may oppose this position,¹⁶ it seems to fail to fully appreciate the competitively sensitive nature of the data being collected, particularly to new market entrants. As a means of balancing the Commission's reporting obligations with carriers' legitimate need for confidentiality, Winstar respectfully requests that the Commission only publicly release carrier data in an aggregate format. Public release on an aggregate basis in no way impairs the Commission's ability to report to Congress while simultaneously ameliorating carrier confidentiality concerns. Winstar submits that aggregate disclosure would benefit all parties by facilitating greater participation in the Commission's data collection process and conserving scarce administrative resources by staving off requests for confidential treatment. Accordingly, Winstar respectfully requests the Commission to publicly release collected data, whether collected on a voluntary or mandatory basis, only in aggregate form to preserve confidentiality.


¹⁶NPRM, ¶ 76.

III. CONCLUSION

Winstar opposes the imposition of mandatory local competition reporting. The availability of data from other sources and the burdens of mandatory reporting demonstrate that the Commission should maintain its program of voluntary reporting. Notwithstanding whether data is reported on a voluntary or mandatory basis, Winstar submits that limiting disclosure of reported data to an aggregate format serves the Commission's objectives while addressing carriers' needs for confidentiality.

Respectfully submitted,

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Dated: December 3, 1999